IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 27 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANCHANJUNGA INVESTMENTS PVT. LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:
1. INCOME TAX REFERENCE No. 27 of 1989
MR BD KARIA for Petitioner No. 1
MR BB NAIK, for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Heard Mr BD Karia for the application and Mr BB Naik for the respondent.

2. At the instance of the assessee, following two questions are referred to for the opinion of this Court:-

1. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in coming to the conclusion that while computing deduction u/s. 80M of the I.T. Act, 1961 deduction u/s. 80K of the Act should be deducted from the gross dividend income ?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in law in coming to the conclusion that addition of notional interest of Rs.40,827/- as receivable from Telerad Pvt. Ltd. is justified in law ?

Similarly, at the instance of the revenue, following question is referred for the opinion of this Court :-

Whether the Appellate Tribunal is right in law in deleting the addition of Rs.35,276/- ?

3. As far as the first question raised by the assessee is concerned, our attention is drawn to the decision of this Court in the case of CIT vs. Sarabhai and Sons, (1995) 211 ITR 20 wherein similar question was decided and this Court has taken the view that for working out the deduction under Section 80M(1) of the Act, the net dividend income after reducing the quantum of dividend income further on account of relief admissible under Section 80K of the Act is to be taken into consideration. Accordingly, we answer this question in favour of the revenue and against the assessee by holding that in computing the deductions allowable under sub-section (1) of Section 80M, the net dividend income should be reduced by the deductions allowable to the assessee under Section 80K, as provided in sub-section (2) of Section 80M.

4. So far as question No. 2 is concerned, it is submitted by Mr Karia, learned advocate for the assessee that similar issue arose in earlier years being Income-tax Reference No. 120 of 1988 which was heard and disposed of by us on 18.6.2002. We accordingly decide this question in light of the said order and direct the assessing authority to consider the matter afresh with

liberty to the assessee to produce the relevant evidence on the record of the case. It goes without saying that the Assessing Officer will pass an order without being influenced by the orders passed by the Commissioner of Income-tax or the Appellate tribunal or any observations made by this Court.

5. So far as the question raised at the instance of the revenue is concerned, this issue was also there in the earlier years being Income-tax Reference No. 120 of 1988 which was heard and decided by us on 18.6.2002. In light of the said decision, we decline to answer this question and remit it to the file of the Assessing Officer for taking a fresh decision in the matter.

The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-